

ANNE GOODWIN CRUMP\*  
VINCENT J. CURTIS, JR.  
THOMAS J. DOUGHERTY, JR.  
JAMES G. ENNIS  
PAUL J. FELDMAN\*  
RICHARD HILDRETH  
EDWARD W. HUMMERS, JR.  
FRANK R. JAZZO  
BARRY LAMBERGMAN  
PATRICIA A. MAHONEY  
M. VERONICA PASTOR\*  
GEORGE PETRUTSAS  
LEONARD R. RAISH  
JAMES P. RILEY  
MARVIN ROSENBERG  
LONNA M. THOMPSON  
KATHLEEN VICTORY\*  
HOWARD M. WEISS  
\*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209

P. O. BOX 33847

WASHINGTON, D.C. 20033-0847

(703) 812-0400

TELECOPIER

(703) 812-0486

PAUL D.P. SPEARMAN  
(1936-1962)  
FRANK ROBERSON  
(1938-1961)

RETIRED  
RUSSELL ROWELL  
EDWARD F. KENEHAN  
ROBERT L. HEALD  
FRANK U. FLETCHER

OF COUNSEL  
EDWARD A. CAINE\*

SPECIAL COUNSEL  
CHARLES H. KENNEDY\*

WRITER'S NUMBER  
(703) 812-

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

September 13, 1993

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: ET Docket No. 92-9

Dear Mr. Caton:

On behalf of Digital Microwave Corporation, we are filing an original and eleven (11) copies of its Petition for Partial Reconsideration in response to the above cited matter.

If there are any questions, please communicate with the undersigned.

Respectfully submitted

FLETCHER, HEALD & HILDRETH

*Leonard Robert Raish*

Leonard Robert Raish  
Counsel for Digital Microwave  
Corporation

LRR:cej  
Enclosures

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of )  
 )  
 Redevelopment of Spectrum to ) ET Docket No. 92-9  
 Encourage Innovation in the )  
 Use of New Telecommunications ) RM-7981  
 Technologies ) RM-8004

**RECEIVED****SEP 13 1993**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION**

Digital Microwave Corporation ("DMC"), through its attorney, submits this Petition for Partial Reconsideration of the Commission's Second Report and Order (FCC 93-350 in the above cited proceeding released on August 13, 1993. This action is taken pursuant to Section 1.429 of the Commission's Rules and is addressed to the imposition of a deadline of July 15, 1994 for the manufacture and importation of equipment that does not meet the new efficiency standards established by the aforementioned Second Report and Order.<sup>1</sup>

**I. GENERAL**

DMC designs, manufacturers and markets advanced, high performance digital microwave radio equipment, primarily for use in the 2 GHz, 6 GHz, 10 GHz, 18 GHz and 23 GHz bands. DMC's products have the capacity to transmit and receive multiple DS1 and DS2, and single DS3 lines carrying voice, data and video signals. DMC is the fourth largest manufacturer of microwave equipment in the U.S., and its customers include common carriers seeking to offer a variety of digital transmission services to their customers, and

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<sup>1</sup> Second Report and Order at para. 53.

private users and governmental agencies which build their own private short haul telecommunications networks. DMC also serves the international communications market and is one of the largest exporters of U.S. made microwave equipment.

**II. IMPOSITION OF JULY 15, 1994 DEADLINE  
CREATES ECONOMIC HARDSHIP FOR DMC**

As stated in the Second Report and Order (at para. 50), the TIA and Joint Commenters<sup>2</sup> recommended that the proposed new digital efficiency requirements be implemented over a five year period. Other parties in the proceeding proposed only a two year transition period. In the course of the proceedings after further comments, reply comments, and meetings between affected industry interests and the Commission staff, a compromise was reached on a transition period of 3.5 years. DMC felt and continues to feel strongly that a five year period should have been allowed. It was to avoid further "deadlock" in the rulemaking process that DMC participated in the TIA offer of a compromise transition period of 3.5 years.

Noting the foregoing, the imposition of a July 15, 1994 date as the deadline for manufacturing of equipment that does not meet the new efficiency standards not only poses unfair hardship upon DMC, but is not in keeping with the compromises reached. Within the past year DMC, at great expense, designed, developed, and introduced into production an entirely new product line that was designed around the old rules. Those rules allowed 16 QAM

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<sup>2</sup> DMC participated in the TIA action in this proceeding and was also one of the Joint Commenters.

modulation to be used for DS-3 traffic. The benefit is a better system gain than 64 QAM modulation. Thus under the current rules DMC was able to successfully design high gain radios for a price less than was being offered in the market. This new equipment is already being used by members of the public.

The issue is one of basic fairness, which translates into economic hardship to DMC and its employees. Considerable costs were involved in developing and marketing these new equipments. Personnel were trained in and are engaged in production and shipping of the new equipment. A significant marketing effort has been underway to familiarize the user public with this new product line. The cost to DMC will be a significant monetary loss despite acting in all respects in good faith in accordance with FCC rules in effect. Further, personnel employed by DMC now face the loss of jobs due to an abrupt change of the Commission's Rules.

DMC takes note of and appreciates the intent of Footnote 26 (see page 20 of the Second Report and Order). However, it is not realistic from a manufacturing standpoint to establish separate production lines for products such as operational-fixed microwave equipment, one for the domestic market and the other for export. To compete successfully the benefits of a single production effort are necessary.

**III. THE JULY 15, 1994 DATE EFFECTIVELY CUTS  
THE TRANSITION PERIOD TO 10 MONTHS**

As the record of the proceedings in ET Docket 92-9 shows, the matter of a deadline for manufacturers to meet the new efficiency

standards was commented upon and debated in a most extensive fashion. The compromise of 3.5 years was finally agreed upon to enable the Commission to proceed with its rulemaking action knowing that the industry was being supportive. Benefits of spectral efficiency were recognized, hence DMC and other interested parties desired to cooperate in obtaining that objective.

When the compromise of 3.5 years was developed, a manufacturing cut-off date of July 15, 1994 was clearly not envisaged. There is no record of this cut-off date being considered during the ET Docket No. 92-9 proceeding, either in any notices from the Commission, in any comments or reply comments filed by interested parties, or in any discussion held with the Commission's staff. Upon reviewing the Second Report and Order, DMC was surprised and very disappointed to see for the first time reference to a July 15, 1994 cut-off date. If the point had come up in the course of the ET Docket No. 92-9, DMC would have commented most forcefully in opposition thereto. It could even be construed that a violation of the Administrative Procedures Act has occurred.

Establishment of a cut-off date on a short notice basis is a substantive point. This is particularly the case considering that a 3.5 year "transition" period was agreed upon only after difficult and lengthy deliberation on the part of the manufacturing industry representatives concerned. Since this substantive point was not released by the Commission for Public Comment, it should not have been included in the Second Report and Order in this proceeding.

**IV. CONCLUSION**

Noting the premises herein, the Commission is urged to eliminate the sentence on Page 20, Paragraph 53 of the Second Report and Order in this proceeding that states:

"To minimize the use of equipment that does not meet the new efficiency standards, we are imposing a deadline of July 15, 1994, for the manufacture or importation of such equipment."

Respectfully submitted,

DIGITAL MICROWAVE CORPORATION

By: Leonard Robert Raish  
Leonard Robert Raish

It Attorney

FLETCHER, HEALD & HILDRETH  
1300 North 17th Street  
11th Floor  
Rosslyn, Virginia 22209  
(703) 812-0400

Date: September 13, 1993